

APR 11 2019

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

NO. CR18-214JLR

Plaintiff,

PLEA AGREEMENT

V.

PRADYUMNA KUMAR SAMAL,

Defendant.

PRADYUMNA KUMAR SAMAL,
Defendant.

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Michael Dion and Siddharth Velamoor, Assistant United States Attorneys for said District, PRADYUMNA KUMAR SAMAL, and his attorney, Emma Scanlan, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in a Second Superseding Information.

2. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charges contained in the Second Superseding Information.

1 a. Mail Fraud, as charged in Count One, in violation of Title 18, United
2 States Code, Section 1341.

3 b. Failure to Collect or Pay Over Tax, as charged in Count Two, in
4 violation of Title 26, United States Code, Section 7202.

5 By entering this plea of guilty, Defendant hereby waives all objections to the form
6 of the charging document. Defendant further understands that before entering his guilty
7 pleas, he will be placed under oath. Any statement given by Defendant under oath may
8 be used by the United States in a prosecution for perjury or false statement.

9 3. **Elements of the Offenses.** The elements of the offenses to which
10 Defendant is pleading guilty, are as follows:

11 a. The elements of Mail Fraud, as charged in Count One, in violation
12 of Title 18, United States Code, Section 1341, are as follows:

13 i. First, the defendant knowingly participated in, devised, or
14 intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money
15 or property by means of false or fraudulent pretenses, representations, or promises.

16 ii. Second, the statements made or facts omitted as part of the
17 scheme were material; that is, they had a natural tendency to influence, or were capable
18 of influencing, a person to part with money or property;

19 iii. Third, the defendant acted with the intent to defraud; that is,
20 the intent to deceive or cheat; and

21 iv. Fourth, the defendant used, or caused to be used, the mails to
22 carry out or attempt to carry out an essential part of the scheme.

23 b. The elements of Failure to Collect or Pay Over Tax, as charged in
24 Count Two, in violation of Title 26, United States Code, Section 7202, are as follows:

25 i. First, the defendant was required to collect, account for, and
26 pay over taxes imposed by federal law;

27 ii. Second, the defendant either failed to truthfully account for
28 such tax or failed to pay over such tax;

iii. Third, the defendant did so willfully.

1 4. **The Penalties.** Defendant understands that the statutory penalties
2 applicable to the offense to which he is pleading guilty are as follows:

3 a. For the offense charged in Count One: A maximum term of
4 imprisonment of twenty (20) years, a fine of up to \$250,000.00, a period of supervision
5 following release from prison of up to three (3) years, and a mandatory special
6 assessment of 100 dollars. If a probationary sentence is imposed, the probation period
7 can be for up to five (5) years. Defendant agrees that the special assessment shall be paid
8 at or before the time of sentencing.

9 b. For the offense charged in Count Two: A maximum term of
10 imprisonment of five (5) years, a fine of up to \$250,000.00, together with the costs of
11 prosecution, a period of supervision following release from prison of up to three (3)
12 years, and a mandatory special assessment of 100 dollars. If a probationary sentence is
13 imposed, the probation period can be for up to five (5) years. Defendant agrees that the
14 special assessment shall be paid at or before the time of sentencing.

15 Defendant understands that supervised release is a period of time following
16 imprisonment during which he will be subject to certain restrictive conditions and
17 requirements. Defendant further understands that if supervised release is imposed and he
18 violates one or more of the conditions or requirements, Defendant could be returned to
19 prison for all or part of the term of supervised release that was originally imposed. This
20 could result in Defendant's serving a total term of imprisonment greater than the statutory
21 maximum stated above.

22 Defendant understands that as a part of any sentence, in addition to any term of
23 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
24 restitution to any victim of the offense, as required by law.

25 Defendant agrees that any monetary penalty the Court imposes, including the
26 special assessment, fine, costs, or restitution, is due and payable immediately and further
27 agrees to submit a completed Financial Statement of Debtor form as requested by the
28 United States Attorney's Office.

1 5. **Rights Waived by Pleading Guilty.** Defendant understands that by
 2 pleading guilty, he knowingly and voluntarily waives the following rights:

- 3 a. The right to plead not guilty and to persist in a plea of not guilty;
- 4 b. The right to a speedy and public trial before a jury of his peers;
- 5 c. The right to the effective assistance of counsel at trial, including, if
 Defendant could not afford an attorney, the right to have the Court
 appoint one for him;
- 6 d. The right to be presumed innocent until guilt has been established
 beyond a reasonable doubt at trial;
- 7 e. The right to confront and cross-examine witnesses against Defendant
 at trial;
- 8 f. The right to compel or subpoena witnesses to appear on his behalf at
 trial;
- 9 g. The right to testify or to remain silent at trial, at which trial such
 silence could not be used against Defendant; and
- 10 h. The right to appeal a finding of guilt or any pretrial rulings.

11 6. **Immigration Consequences.** Defendant recognizes that pleading guilty
 12 may have consequences with respect to his immigration status because he is not a citizen
 13 of the United States. Under federal law, a broad range of crimes are grounds for removal,
 14 including the offenses to which Defendant is pleading guilty, and some offenses make
 15 removal from the United States is presumptively mandatory. Removal and other
 16 immigration consequences are the subject of a separate proceeding, however, and
 17 Defendant understands that no one, including his attorney or the district court, can predict
 18 to a certainty the effect of his conviction on his immigration status. Defendant
 19 nevertheless affirms that he wants to plead guilty regardless of any immigration
 20 consequences that his guilty plea may entail, even if the consequence is his mandatory
 21 removal from the United States.

1 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 2 guaranteed what sentence the Court will impose.

3 8. **Restitution.** Defendant agrees to pay restitution in an amount to be
 4 determined by the Court at Sentencing. Defendant agrees that such restitution shall
 5 include a payment to the Internal Revenue Service (“IRS”) in a total amount equal to the
 6 amounts accounted for but not paid over on the Forms 941 filed by Divensi, Inc.,
 7 Azimetry, Inc., and Divensi Technology, Inc. referred to in Section 10(b) below, pursuant
 8 to 18 U.S.C. § 3663(a)(3). Defendant understands and agrees that this figure does not
 9 include interest under 26 U.S.C. § 6601, which will be assessed by the IRS pursuant to
 10 Title 26.

11 Defendant agrees that the total amount of restitution reflected in this agreement
 12 results from Defendant’s criminal conduct.

13 Defendant agrees that restitution is due and payable immediately after the
 14 judgment is entered and is subject to immediate enforcement, in full, by the United
 15 States. If the Court imposes a schedule of payments, defendant agrees that the schedule
 16 of payments is a schedule of the minimum payment due, and that the payment schedule
 17 does not prohibit or limit the methods by which the United States may immediately
 18 enforce the judgment in full.

19 The IRS will use the amount of restitution order as the basis for a civil assessment
 20 under 26 U.S.C. § 6201(a)(4). Defendant does not have the right to challenge the amount
 21 of this restitution-based assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the
 22 existence of a restitution payment schedule nor the defendant’s timely payment of
 23 restitution according to that schedule will preclude the IRS from immediately collecting
 24 the full amount of the restitution-based assessment. Interest on the restitution-based
 25 assessment will accrue under 26 U.S.C. § 6601 from the last date prescribed for payment
 26 of the tax liability that is the subject of the restitution-based assessment to the date that
 27 the IRS receives full payment.

1 Defendant is entitled to receive credit for restitution paid pursuant to this plea
 2 agreement against those assessed civil tax liabilities due and owing for the same periods
 3 for which restitution was ordered. Defendant understands and agrees that the plea
 4 agreement does not resolve the Defendant's civil tax liabilities, that the IRS may seek
 5 additional taxes, interest and penalties from the Defendant relating to the conduct covered
 6 by this plea agreement and for conduct relating to another time period, and that
 7 satisfaction of the restitution debt does not settle, satisfy, or compromise Defendant's
 8 obligation to pay any remaining civil tax liability. Defendant authorizes release of
 9 information to the IRS for purposes of making the civil tax and restitution-based
 10 assessments.

11 Defendant understands that he is not entitled to credit with the IRS for any
 12 payment until the payment is received by the IRS.

13 9. **Tax Loss Amount.** The United States and Defendant stipulate and agree
 14 that the correct amount of tax loss for purposes of sentencing will be determined by the
 15 Court at the time of Sentencing on the basis of the amounts accounted for but not paid
 16 over in the Forms 941 referred to in Section 10(b) below. Defendant understands that the
 17 determination of tax loss by the Court at Sentencing does not preclude the IRS from
 18 assessing and determining any additional civil tax, penalties, and/or interest that may be
 19 owed by Defendant. In addition, Defendant understands that he is required to pay costs
 20 of prosecution of Count Two.

21 10. **Statement of Facts.** The parties agree on the following facts. Defendant
 22 admits he is guilty of the charged offenses: Mail Fraud, in violation of Title 18, United
 23 States Code, Section 1341; and Failure to Collect or Pay Over Tax, in violation of Title
 24 26, United States Code, Section 7202.

25 a. Mail Fraud

26 The Defendant has been the owner and Chief Executive Officer ("CEO") of two
 27 Seattle-area companies named Divensi, Inc. ("Divensi"), founded in 2010, and Azimetry,
 28 Inc. ("Azimetry"), founded in 2011, (collectively the "Companies"). In that role, the

1 Defendant knowingly devised and participated in a scheme to defraud and to obtain
 2 money by means of false pretenses and representations. The Defendant's scheme relied
 3 on materially false statements, insofar as they had a natural tendency to influence or were
 4 capable of influencing a person to part with money or property. When taking the steps
 5 described below, the Defendant acted with the intent to defraud.

6 More specifically, in his role as CEO, the Defendant prepared, and caused others
 7 at the Companies to prepare, fraudulent petitions and petition-related documents that the
 8 Companies submitted to the United States Citizenship and Immigration Services
 9 ("USCIS") and United States Department of State by means of U.S. Mail and commercial
 10 carrier. Through these petitions and related materials, referred to herein as "H-1B
 11 petitions," the Companies sought work status and visas for foreign-national employees
 12 under the specialty-occupation or "H-1B"-visa program. *See* 8 U.S.C.
 13 § 1101(a)(15)(h)(i)(B). The H-1B petitions required the petitioning company to represent
 14 to the United States, under penalty of perjury and criminal and civil penalties, the true
 15 name, location, terms, and duration of the underlying employment position to be filled by
 16 the stated beneficiary in each petition.

17 The Defendant knowingly included and caused others to include materially false
 18 statements and material omissions about the nature and location of the purported
 19 employment that would be performed by each beneficiary. The Defendant falsely
 20 represented that the foreign-national employees had been earmarked for extant projects
 21 that they purportedly would perform at the Companies' offices.

22 In truth and in fact, and as Defendant then and there knew, at least some of the
 23 materials he submitted, and caused to be submitted to the Government, stated that the
 24 foreign-national employees would be assigned to projects to which they would not, in
 25 fact, be assigned. This induced the government to issue work status and visas that would
 26 not otherwise have been issued. The Defendant falsely represented in these petitions that
 27 the employees' purported assignments had durations equal to the maximum permissible
 28

1 duration under the H-1B program, thereby inducing the government to issue work status
 2 to foreign nationals for a corresponding length of time.

3 The Defendant intended to create a pool of H-1B employees with long-term work
 4 status, who could be marketed to large corporate clients for those clients' off-site short-
 5 term projects. At the Defendant's direction, when marketing employees to clients, the
 6 Companies represented that the employees had lawful work status in the United States,
 7 and omitted that the work status had been obtained through the use of false statements to
 8 the U.S. government.

9 At Defendant's direction, the Companies used fraudulent and forged materials in
 10 furtherance of the scheme. The Defendant, together with others, attached forged letters
 11 that appeared to have been issued and signed by the Companies' clients to H-1B
 12 petitions. The letters were intended to substantiate the existence and duration of the
 13 purported projects, by claiming that the foreign-national employees named in the
 14 petitions had indeed been earmarked for those projects. The Defendant caused similar
 15 forged letters to be sent by U.S. mail and commercial carrier to the U.S. Department of
 16 State, to induce U.S. consular officers to issue H-1B visas to employees.

17 On or about April 1, 2014, the Defendant caused to be used the mails to carry out
 18 an essential part of the scheme. More specifically, the Defendant caused to be mailed to
 19 the U.S. Department of Homeland Security from the Companies' offices in Bellevue an
 20 H-1B petition relating to a foreign-national employee referred to herein as "L.N." In the
 21 petition, the Defendant falsely subscribed as true, under penalty of perjury, that L.N. had
 22 been earmarked for a project, which L.N. purportedly would perform at Azimetry's
 23 offices in Bellevue for a project duration of three years. The Defendant included a forged
 24 letter in the petition from the client on whose project L.N. purportedly would work. In
 25 truth and in fact, and as the Defendant then and there knew, L.N. had not been earmarked
 26 for any project, and would only be marketed for client projects if and when the
 27 government approved the petition.

b. Failure To Collect Or Pay Over Tax

As the owner and CEO of Divensi, Azimetry, and Divensi Technology, Inc.

(collectively “Count Two Companies”), the Defendant employed various employees and maintained authority over the Count Two Companies’ finances and other business-related decisions. The Defendant was required by federal law to collect, truthfully account for, and pay over payroll and employment taxes, including income and Social Security and Medicare (FICA) tax withholdings, to the U.S. Department of the Treasury, Internal Revenue Service (IRS).

In contravention of his obligations under federal law, and together with employees at his companies' offices in the Western District of Washington and elsewhere, the Defendant willfully failed to pay over such taxes to the IRS, as set out below:

- Divensi: The Defendant caused Forms 941 to be filed by Divensi in all four quarters of 2017 and the first quarter of 2018. While the Forms 941 filed by Divensi for those five quarters truthfully accounted for the tax balance owed by Divensi, the Defendant willfully failed to pay over those taxes, as required by law.
- Azimetry: The Defendant caused Forms 941 to be filed by Azimetry in the second, third, and fourth quarters of 2017 and the first two quarters of 2018. While the Forms 941 filed by Azimetry for those five quarters truthfully accounted for the tax balance owed by Azimetry, the Defendant willfully failed to pay over those taxes, as required by law.
- Divensi Technology, Inc.: The Defendant caused a Form 941 to be filed by Divensi Technology, Inc. in the fourth quarter of 2017. While the Form 941 filed by Divensi Technology, Inc. for that quarter truthfully accounted for the tax balance owed by Divensi Technology, Inc., the Defendant willfully failed to pay over those taxes, as required by law.

* * * *

1 The parties agree that the Court may consider additional facts contained in the
 2 Presentence Report (subject to standard objections by the parties) and/or that may be
 3 presented by the United States or Defendant at the time of sentencing, and that the factual
 4 statement contained herein is not intended to limit the facts that the parties may present to
 5 the Court at the time of sentencing.

6 **11. United States Sentencing Guidelines.** Defendant understands and
 7 acknowledges that the Court must consider the sentencing range calculated under the
 8 United States Sentencing Guidelines and possible departures under the Sentencing
 9 Guidelines together with the other factors set forth in Title 18, United States Code,
 10 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
 11 history and characteristics of the defendant; (3) the need for the sentence to reflect the
 12 seriousness of the offense, to promote respect for the law, and to provide just punishment
 13 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
 14 conduct; (5) the need for the sentence to protect the public from further crimes of the
 15 defendant; (6) the need to provide the defendant with educational and vocational training,
 16 medical care, or other correctional treatment in the most effective manner; (7) the kinds
 17 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
 18 avoid unwarranted sentence disparity among defendants involved in similar conduct who
 19 have similar records. Accordingly, Defendant understands and acknowledges that:

- 20 a. The Court will determine applicable Defendant's Sentencing
 Guidelines range at the time of sentencing;
- 21 b. After consideration of the Sentencing Guidelines and the factors in
 22 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
 23 maximum term authorized by law;
- 24 c. The Court is not bound by any recommendation regarding the
 25 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
 26 range offered by the parties or the United States Probation Department, or by any
 27 stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw his guilty plea solely because of the sentence imposed by the Court.

3 12. **Acceptance of Responsibility.** At sentencing, if the district court
4 concludes Defendant qualifies for a downward adjustment for acceptance of
5 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
6 greater, the United States will make the motion necessary to permit the district court to
7 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
8 because Defendant has assisted the United States by timely notifying the United States of
9 his intention to plead guilty, thereby permitting the United States to avoid preparing for
10 trial and permitting the Court to allocate its resources efficiently.

11 13. **Sentencing Factors.** The parties agree that the following Sentencing
12 Guidelines provisions apply to this case:

13 a. The use of gain as an alternative measure of loss under USSG
14 §2B1.1(b)(1), pursuant to application note 3(B) and based on the parties' agreement that,
15 although there was a loss that resulted from the conduct covered by Count One, it
 reasonably cannot be determined.

16 The parties agree that they are free to present arguments regarding the
17 applicability of all other provisions of the United States sentencing Guidelines. The
18 Defendant understands, however, that at the time of Sentencing, the Court is free to reject
19 these stipulated and recommended adjustments, and is further free to apply additional
20 downward or upward adjustments in determining Defendant's Sentencing Guidelines
21 range. Defendant further acknowledges the inevitable uncertainty regarding the Court's
22 ultimate calculation of the Sentencing Guidelines at the time of Sentencing, and
23 nevertheless acknowledges that Defendant is entering into this guilty plea and this Plea
24 Agreement knowingly, intelligently, and voluntarily.

14. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
the United States Attorney's Office for the Western District of Washington agrees not to
prosecute Defendant for any additional offenses known to it as of the time of this

1 Agreement that are based upon evidence in its possession at this time, and that arise out
 2 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
 3 United States has agreed not to prosecute all of the criminal charges the evidence
 4 establishes were committed by Defendant solely because of the promises made by
 5 Defendant in this Agreement. Defendant further agrees, however, that for purposes of
 6 preparing the Presentence Report, the United States Attorney's Office will provide the
 7 United States Probation Office with evidence of all conduct committed by Defendant.

8 Defendant agrees that any charges to be dismissed before or at the time of
 9 sentencing were substantially justified in light of the evidence available to the United
 10 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 11 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
 12 (1997).

13 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
 14 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 15 Agreement and Defendant may be prosecuted for all offenses for which the United States
 16 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 17 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 18 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
 19 Defendant has waived any objection to the re-institution of any charges that were
 20 previously dismissed or any additional charges that had not been prosecuted.

21 Defendant further understands that if, after the date of this Agreement, Defendant
 22 should engage in illegal conduct, or conduct that violates any conditions of release or the
 23 conditions of his confinement, (examples of which include, but are not limited to,
 24 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
 25 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
 26 Officer, Probation Officer, or Court), the United States is free under this Agreement to
 27 file additional charges against Defendant or to seek a sentence that takes such conduct
 28 into consideration by requesting the Court to apply additional adjustments or

1 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
 2 advisory Guidelines range, and/or by seeking an upward departure or variance from the
 3 calculated advisory Guidelines range. Under these circumstances, the United States is
 4 free to seek such adjustments, enhancements, departures, and/or variances even if
 5 otherwise precluded by the terms of the plea agreement.

6 **16. Waiver of Appellate Rights and Rights to Collateral Attacks.**

7 Defendant acknowledges that by entering the guilty plea(s) required by this plea
 8 agreement, Defendant waives all rights to appeal from his conviction and any pretrial
 9 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
 10 sentence that is within or below the Sentencing Guidelines range (or the statutory
 11 mandatory minimum, if greater than the Guidelines range) as determined by the court at
 12 the time of sentencing, Defendant waives to the full extent of the law:

13 a. Any right conferred by Title 18, United States Code, Section 3742,
 14 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
 15 restitution order, probation or supervised release conditions, or forfeiture order (if
 16 applicable); and

17 b. Any right to bring a collateral attack against the conviction and
 18 sentence, including any restitution order imposed, except as it may relate to the
 19 effectiveness of legal representation; and

20 This waiver does not preclude Defendant from bringing an appropriate motion
 21 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
 22 decisions of the Bureau of Prisons regarding the execution of her sentence.

23 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
 24 attacking (except as to effectiveness of legal representation) the conviction or sentence in
 25 any way, the United States may prosecute Defendant for any counts, including those with
 26 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
 27 Agreement.

1 17. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
2 Agreement freely and voluntarily and that no threats or promises, other than the promises
3 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
4 guilty.

5 18. **Statute of Limitations.** In the event this Agreement is not accepted by the
6 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
7 the statute of limitations shall be deemed to have been tolled from the date of the Plea
8 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
9 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
10 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

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1 19. **Completeness of Agreement.** The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.
3 This Agreement binds only the United States Attorney's Office for the Western District
4 of Washington. It does not bind any other United States Attorney's Office or any other
5 office or agency of the United States, or any state or local prosecutor.

6 Dated this 11th day of April, 2019.

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PRADYUMNA KUMAR SAMAL
Defendant


EMMA SCANLAN
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